IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

SCOTT NILSEN, JOSEPH HAFNER, LINDA DAVIS, and MICHAEL GOWEN, on behalf of themselves and all others similarly situated,	)	No. 56322-0-I
Appellants,	)	UNPUBLISHED OPINION
v.	)	
LONG BEACH MORTGAGE COMPANY, A Delaware Corporation,	)	
Respondent.	)	
	)	FILED: **August 28, 2006**

SCHINDLER, A.C.J. — Long Beach Mortgage Company (LBMC), a licensed lender under chapter 31.04 RCW, the Consumer Loan Act (CLA), approved residential home loan applications submitted by independent brokers for each of the borrowers in this case and loaned money to purchase a home. The borrowers allege LBMC violated the CLA by charging fees in excess of those authorized by the statute, and by improperly including certain loan fees in the principal amount of the loan and then charging interest on the entire amount. The trial court granted summary judgment in favor of LBMC and dismissed the borrowers' lawsuit. We conclude LBMC did not

violate the CLA. Because there is no evidence that the independent mortgage brokers were owned by the licensed lender, the mortgage brokers' fees are not included in calculating the statutory cap for loan origination fees lenders may charge under the CLA. We also conclude there is no evidence closing costs were improperly included in the principal amount of the loans. We affirm the trial court's decision granting summary judgment to LBMC.

FACTS

Long Beach Mortgage Company (LBMC) is a wholesale home mortgage lender with its principal place of business in Anaheim, California. LBMC is a licensed lender under Washington's Consumer Loan Act (CLA).[1] LBMC is one of the nation's largest wholesale residential home loan lenders operating in the subprime market.[2]

The legislature enacted the CLA to ensure the availability of credit to borrowers who represent a higher than average credit risk. The CLA is an exemption from Washington's usury statute, which prohibits lenders from making loans bearing interest rates in excess of 12 percent. RCW 19.52.020. The CLA allows lenders to charge interest rates of up to 25 percent, subject to certain limitations. RCW 31.04.005.

As a wholesale lender, LBMC does not operate any retail facilities and receives loan applications only through mortgage brokers. The wholesale lending market is very competitive, and the relationship between the lenders and the broker is not exclusive.

Mortgage brokers are independent entities who deal directly with borrowers to assist them in finding a loan that meets their financial needs. The mortgage broker and

[1] Long Beach Mortgage Company is now a subsidiary of Washington Mutual.

[2] Subprime lending refers to the extension of credit to higher-risk borrowers.

the borrower negotiate a fee for the broker's financial services. The mortgage broker then conducts an "underwriting" process to determine whether the borrower will qualify for a loan and what type of loan will best accommodate the borrower's financial circumstances by reviewing the borrower's credit history and debt ratio.

LBMC and its competitors offer a number of different loan options with fixed and variable interest rates, divergent terms, and different credit and financing requirements. Brokers select loan options for the borrower from a number of different lenders and loan products. LBMC has adopted a policy that it will not make a loan if the total amount of the fees for the mortgage broker and LBMC exceed five percent of the loan amount.

Before LBMC will accept a loan application from a mortgage broker for a borrower, the broker must be "approved" by LBMC. To be approved, the broker must agree to comply with federal laws, provide evidence of the broker's license, and be in good standing with state regulators. Under LBMC's "Broker Agreement," the broker is responsible for obtaining and verifying the borrower's financial data, and for preparing the loan application. In return, LBMC agrees to consider an application submitted by the mortgage broker but is under no obligation to accept the application and fund the loan for the borrower.

In the "Broker Agreement," the mortgage broker is expressly described as an independent entity that is not controlled or employed by LBMC.

> Broker's status under this Agreement is that of an "originator of loans." Nothing contained herein shall be construed to create the relationship of either employer and employee or principal and agent between Lender and Broker. Broker has no proprietary or exclusive right, title, or interest in or to, or control over, any business of Lender or any area, state or jurisdiction in which Lender does or may do business. Broker is specifically prohibited from using the Lender's name in any form of advertising. Lender may, at its

> sole and absolute discretion, cancel or discontinue any of its products with or without notice to Broker.

After receiving a loan application package from a broker, LBMC prepares a "good faith estimate" for the borrower's closing costs on the loan. The good faith estimate includes LBMC's fees, as well as the mortgage broker's fees. LBMC sends the good faith estimate directly to the borrower. LBMC then performs its own underwriting analysis to determine the likelihood that the borrower will be able to repay the loan. If the underwriter approves the loan, a loan coordinator or loan processor works with the broker to ensure that any conditions for approval are met and to prepare the documents for escrow. As part of the closing process, the broker submits a "doc.request" form itemizing the broker's fees and amounts paid to third parties. LBMC incorporates the "doc.request" information into the instructions for escrow for preparation of the HUD Settlement Statements (HUD Statements). When the final loan documents are executed, the escrow agent pays out the loan amount according to the escrow instructions and the HUD Statements.

In 1999 and 2001, LBMC loaned money to each of the borrowers, Scott Nilsen, Michael Gowen, and Joseph Hafner (collectively "the borrowers"), to purchase a residential home. Each borrower employed the services of a different mortgage broker – Source Financial, Guaranty Mortgage, and America One – to assist in obtaining a loan. Each of the mortgage brokers for the three borrowers obtained a home loan from LBMC.

In 2003, Nilsen sued LBMC. Nilsen alleged that LBMC violated the Consumer Protection Act (CPA) and the Mortgage Brokers Practices Act (MBPA) by charging an

underwriting fee in addition to the underwriting fee charged by the broker.[3] In January 2004, Nilsen filed an amended complaint adding Gowen and Hafner as plaintiffs, alleging new claims, and seeking class certification. The amended complaint alleged LBMC violated the CLA by including charges in the principal amount of the loan in excess of those authorized under the statute. The borrowers also alleged CLA and CPA violations based on underwriting charges imposed by LBMC and the mortgage brokers, and based on LBMC's failure to disclose its underwriting fee. In addition, the borrowers asserted claims against LBMC for breach of contract and aiding and abetting in violations of the MBPA.[4]

After approximately two years of discovery, the parties filed motions for summary judgment. The borrowers filed two motions for partial summary judgment. One motion sought summary judgment on the issue of whether LBMC improperly charged prepaid interest.[5] The other motion requested summary judgment on the borrowers' claim that LBMC charged loan origination fees in excess of the statutory limit under the CLA and improperly charged interest on those fees. LBMC's cross motion for summary judgment requested dismissal of the borrowers' claims in their entirety.

The trial court granted summary judgment in favor of LBMC and dismissed the borrowers' lawsuit. The borrowers appeal.

ANALYSIS

Standard of Review

This court reviews summary judgment de novo. Hisle v. Todd Pac. Shipyards Corp.,

[3] The original complaint is not in the record on appeal.

[4] The court denied the borrowers' motion for class certification without prejudice.

[5] This claim was not alleged in the borrowers' complaint.

151 Wn.2d 853, 860, 93 P.3d 108 (2004). Summary judgment is proper if the record establishes "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c). The court must consider the facts submitted and all reasonable inferences from those facts in the light most favorable to the nonmoving party. Denaxas v. Sandstone Court of Bellevue, L.L.C., 148 Wn.2d 654, 662, 63 P.3d 125 (2003). Only when reasonable minds could reach but one conclusion on the evidence should the court grant summary judgment. Smith v. Safeco Ins. Co., 150 Wn.2d 478, 78 P.3d 1274 (2003).

CLA Loan Origination Fee Cap

The borrowers claim summary judgment was improperly granted because there are genuine issues of material fact as to whether LBMC charged loan origination fees[6] in excess of those authorized under the CLA.[7] The CLA only allows licensed lenders, such as LBMC, to charge the borrower:

> a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan.[8]

LBMC charged loan origination fees to all three borrowers for processing, preparing, and underwriting the home loans. LBMC's charges are identified as

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[6] A loan origination fee is generally defined as the fee charged for preparing, processing, and evaluating a loan. See Housing and Urban Development (HUD) Glossary, www.hud.gov/offices/hsg/sfh/buying/glossary.cfm.

[7] LBMC urges this court to affirm summary judgment on the ground that the CLA's loan origination fee cap is preempted by federal law. Because preemption was not timely raised below and therefore was not considered by the trial court, we decline to address this argument. See Mt. Park Homeowners Ass'n v. Tydings, 125 Wn.2d 337, 344, 883 P.2d 1383 (1994) (a reviewing court may sustain a trial court's summary judgment ruling only upon a ground established by the pleadings below and supported by the record).

[8] RCW 31.04.105(2).

"document preparation" and "underwriting" on the HUD Statements. The document preparation and underwriting fees paid to LBMC were approximately $500-$650 for each of the three borrowers. The only fee identified as a "loan origination" fee in the HUD Statements was paid to each mortgage broker. The loan origination fee paid to each mortgage broker accounts for a large portion of the closing costs. For Nilsen, the loan origination fee paid to the mortgage broker was $5,600 (2% of his $280,000 loan). For Gowen, the loan origination fee was $5,152 (4% of his $128,800 loan). And for Hafner, the fee was $2,588.25 (1.5% of his $172,550 loan).

The dispositive issue is whether the fees paid to the mortgage brokers must be included in calculating the statutory cap for the lenders' loan origination fee under the CLA. The premise of the borrowers' claim that LBMC violated the CLA by charging loan origination fees in excess of the statutory cap requires inclusion of the loan origination fees paid to the mortgage brokers at closing. There is no dispute that if LBMC's loan origination fees are combined with the mortgage brokers' loan origination fees, the total fees exceed the statutory cap under the CLA.

The court's goal in interpreting statutes is to determine and give effect to the legislature's intent. King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 142 Wn.2d 543, 555, 14 P.3d 133 (2000). We begin with the language of the statute and if the language is unambiguous, the court will give effect to that language and that language alone because we presume the legislature says what it means and means what it says. State v. Radan, 143 Wn.2d 323, 330, 21 P.3d 255 (2001). Clear and unambiguous statutory language is not subject to judicial construction. Hines v. Data

Line Systems, Inc., 114 Wn.2d 127, 143, 787 P.2d 8 (1990); Bravo v. Dolsen Cos., 125 Wn.2d 745, 752, 888 P.2d 147 (1995) (quoting Krystad v. Lau, 65 Wn.2d 827, 844, 400 P.2d 72 (1965)). We cannot ignore the unambiguous terms of the CLA, which apply only to lenders licensed under the Act. We presume that if the legislature intended to regulate mortgage brokers' fees under the CLA, it would have stated so.

The purpose of RCW 31.04.105(2) is to limit the loan origination fee that a "licensee," such as LBMC, may "charge the borrower." A licensee is a person or entity to whom a license has been issued under the CLA. RCW 31.04.015(2); RCW 31.04.015(3). There is no dispute LBMC is a licensed lender under the CLA, and the mortgage brokers who are retained by the borrowers do not qualify as licensees under the CLA. Washington law distinguishes between lenders and brokers, and brokers are not governed by the CLA. Easter v. Am. West Fin, 381 F. 3d 948, 957 (9th Cir. 2004). Nor is there any provision of the CLA stating that fees charged by a mortgage broker should be attributed to a licensee for purposes of the loan origination fee cap. The CLA expressly regulates and limits only loan origination fees charged by lenders licensed under the Act.

But, the borrowers assert that the mortgage brokers and LBMC are affiliated. The borrowers rely on interpretive letters of the Department of Financial Institution (DFI) to support their argument. The borrowers also argue that because the mortgage brokers were paid a loan origination fee as designated in the HUD Statements, the mortgage broker loan origination fees should be attributed to LBMC.

When an agency has the responsibility to interpret a statute, courts should defer

to the agency's interpretation. Sebastian v. Department of Labor & Indus., 142 Wn.2d 280, 291-92, 12 P.3d 594 (2000). The parties agree this court should defer to DFI's interpretation of the provisions of the CLA. See RCW 31.04.165(1) (the director of DFI has the power to "administer and interpret" the CLA).

In particular, the borrowers focus on a 1996 DFI interpretive letter which states that the CLA's origination fee limitation "is applied for the combined mortgage broker/lender fees." But, according to the other DFI interpretive letters in the record, a mortgage broker's fees will apply toward the statutory cap for the lender's origination fee only when the broker is "employed" by or "affiliated" with the lender. Thus, the only circumstance in which DFI contemplates that a mortgage broker and lender fee is combined for purpose of calculating the statutory cap is where the mortgage broker is "affiliated" with or employed by the CLA licensee.

We must interpret DFI's use of the term "affiliation" in the context of the statute. King County, 142 Wn.2d at 555. Under the CLA, a mortgage broker is affiliated with a licensed lender only when the brokerage is owned by the lender or under common ownership. Under RCW 31.04.105(4), a licensed lender may:

> agree with the borrower to pay a fee to a mortgage broker that is not owned by the licensee or under common ownership with the licensee and that performed services in connection with the origination of the loan. A licensee may not receive compensation as a mortgage broker in connection with any loan made by the licensee.

The statutory scheme demonstrates the intent of the CLA is to prohibit lenders from owning a brokerage to avoid the limitations of the CLA. This concern is reflected in DFI's interpretive letters. For example, in answer to an inquiry about whether broker

fees may be financed as a part of the loan, the DFI responded that it had "no objections" to that arrangement, "provided the broker is not affiliated with or employed by the lender."

Nevertheless, the borrowers contend the brokers are affiliated with LBMC because the Broker Agreement refers to the mortgage broker as "an originator of loans." The borrowers also rely on a provision in the Broker Agreement regarding the brokers' compensation that states, in part:

> If a submission of a loan application by Broker to Lender results in the closing of a loan by Lender, the Lender shall pay to Broker a fee to compensate Broker for its actual services rendered in packaging the loan application and not as a commission or any other type of consideration. Such payments shall be made only if such loan is closed by Lender and only after said loan closing.

In addition, the Broker Agreement prohibits the broker from having an "agreement with the applicant or any other person whereby Broker will receive any compensation or consideration as a result of Lender's making of a loan to the applicant other than is provided in this AGREEMENT."

The borrowers' reliance on these provisions in the Broker Agreement is misplaced because the provisions only pertain to payment of yield spread premiums and the borrowers make no claim concerning the payment of a yield spread premiums. A yield spread premium is compensation negotiated separately between the broker and the lender and is paid outside of closing to the mortgage broker. The yield spread premium provisions in the Broker Agreement do not support the borrowers' claim that the mortgage brokers are employees or agents of LBMC.

There is also no evidence that the mortgage brokers were employed by or

were agents of LBMC. The Broker Agreement clearly identifies the independent status of the mortgage broker and states that the relationship is not one of "employer and employee or principal and agent."

The area production manager at LBMC, Jay Weisbrod, also testified that an "approved" broker is independent. And there is no evidence in the record contradicting Weisbrod or showing otherwise. The borrowers also disregard the evidence that the borrowers and the mortgage brokers negotiated the fee and how that fee would be paid. The fees were paid out of the combined funds that the borrower and seller contributed at closing for Gowen and Hafner. For Nilsen, the closing costs, including the broker's fee, were paid partially out of the borrower's funds and partially out of the loan proceeds. LBMC also paid the brokers in each case a yield spread premium.

Unless there is evidence that the brokers were employed by LBMC or LBMC had an ownership interest in the brokerage, there is no basis to conclude the mortgage brokers are affiliates of LBMC. The only testimony in the record concerning the role of the brokers and their relationship with LBMC is the unrefuted testimony of Weisbrod, which establishes the mortgage brokers were not affiliated with LBMC.[9]

The borrowers also argue that the "loan origination fees" received by the brokers should be included for purposes of the CLA's cap because (1) the brokers' fees were recorded on line 801 of the borrowers' HUD Statements, which is

[9] During the approximately two years between the time the complaint was filed and the summary judgment motions, the borrowers came forth with no evidence showing that the brokers were employed by LBMC or had common ownership with LBMC.

generally the line used to record the lender's loan origination fee; and (2) there are no written agreements between the borrowers and brokers. But, even assuming we agree with the borrowers' assertions, the CLA cap limits only the loan origination fee charged by a licensed lender. And, as explained, the only circumstance where broker fees count for purposes of the statutory limit is where there is an employment relationship or common ownership.[10]

In sum, RCW 31.04.105(2) limits loan origination fees that may be charged by licensed lenders under the CLA. Mortgage brokers' fees may only be included in calculating the loan origination fee statutory limit where the broker is affiliated with the licensed lender. "Affiliation" for purposes of the CLA means that the mortgage broker is employed by or owned by the licensed lender. It is undisputed that LBMC neither owns nor employs the mortgage brokers in this case. We conclude summary judgment was properly granted.

Interest on Principal Amount

The borrowers also claim LBMC violated the CLA by improperly including loan fees in the "principal amount" of the loans and by charging interest on those amounts.

Under the CLA, lenders must use the "simple interest" method for calculating

[10] LBMC relies on an Iowa Supreme Court case that rejected the claim that LBMC violated an Iowa statute imposing limits on fees lenders may charge borrowers in connection with the purchase or financing of real property used for family dwellings. Gardin v. Long Beach Mortgage Co., 661 N.W.2d 193 (Iowa 2003). The plaintiffs in Gardin argued that a "loan origination" fee paid to the mortgage broker was "collected" by LBMC and therefore, LBMC violated the Iowa statute that prohibited the lender from charging loan origination fees in excess of 2% of the amount financed. The court rejected the argument that the lender collected the fees because the fees were financed as a part of the loan, and the lender received interest on those fees for the life of the loan. The court noted that the lender was not a party to the agreement between the broker and borrower, and was not responsible for the borrower's choice as to how the broker's fees should be paid. Gardin, 661 N.W.2d at 198. While the arguments presented are somewhat different here, Gardin is consistent with our decision.

interest. RCW 31.04.125(2). RCW 31.04.015(7) defines the simple interest method as "the method of computing interest payable on a loan by applying the annual percentage interest rate or its periodic equivalent to the unpaid balances of the principal of the loan outstanding. . . ." The corresponding WAC regulation uses a slightly different definition. WAC 208-620-010 states that the interest rate applies to the "unpaid principal amount" of the loan. The principal amount of the loan is the "loan amount advanced to or for the direct benefit of the borrower," and the principal balance is the "principal amount plus any allowable origination fee." WAC 208-620-010.

The parties' dispute concerns what is properly included in the "principal amount" of the loan. The borrowers contend that by including third party payments in the closing costs and the mortgage broker's fee in the principal loan amount, LBMC improperly charged interest on amounts that were not "advanced to or for the direct benefit of the borrower."

The only fee that must be excluded from the "principal amount" of the loan is the lender's loan origination fee. RCW 31.04.105(2).[11] Under RCW 31.04.105(3), the principal "amount of the loan" may include amounts to reimburse the lender for fees paid to "third party service providers," such as credit reporting companies, title companies, appraisers, and escrow companies.[12] Thus, unlike the lender's origination fee, under the CLA, the fees paid to third party service providers can be

[11] The lender's fee may be included in the "principal balance." RCW 31.04.105(2).

[12] Mortgage brokers are excluded from the definition of "third party service providers" to which this provision applies, RCW 31.04.015(17), so the statute prohibits the lender from paying the broker's fees and reimbursing itself by increasing the principal amount of the loan.

included in the "principal amount" of the loan.

DFI also takes the position that the mortgage broker fee is and advanced to or for the direct benefit of the borrower and may be included in the principal amount of the loan. In one of its interpretive letters, DFI states: "[t]he broker's fee can be considered a part of the principal amount of the loan advanced to or for the direct benefit of the borrower."[13] When the borrower is responsible for paying the broker's fees, the borrower is directly benefited by being allowed to choose whether to finance these costs or pay the costs at closing. See also Gardin, 661 N.W.2d at 199 (the lender "should not be held liable for a choice the borrower made as to how the broker fee was to be paid").[14] Additionally, LBMC argues that loan-related third party expenses paid by mortgage brokers may be included in the principal amount. Under the MBPA, the borrower is responsible for paying for third party services. Amounts advanced for these payments are also advanced for the "benefit of the borrower." RCW 19.146.050 and RCW 19.146.070(b).

Here, the question regarding what loan fees may be "financed" or included in the principal amount of the loan is academic with respect to at least two of the three borrowers. Gowen borrowed $128,800 to purchase his house for $161,000.[15] Gowen's closing costs and prorated property taxes were $9,149.19. The HUD Statement shows that those costs were paid by a combination of the seller's funds

[13] DFI has no objection to broker's fees being included in the principal amount of the loan, unless the broker is "affiliated or employed" by the lender.

[14] (Emphasis in original.)

[15] Gowen also obtained a second loan of $32,200.

($7,818.68) and the borrower's funds ($1,000 earnest money plus $330.51 cash at closing). Hafner borrowed $172,550 to buy a house with a purchase price of 203,000.[16] The closing costs of $6,346.99 were also paid by a combination of funds from the buyer and seller (seller contributed $5,000 and Hafner deposited $1,346.99).

Nilsen borrowed $280,000 to purchase a house, pay off personal debts, and receive approximately $3,000 cash at closing. Nilsen paid $5,000 and the closing costs were $7,900. While some closing costs were financed, there is no evidence that LBMC's loan origination fee was included in the principal amount of the loan in violation of RCW 31.04.105(2).

There is no material issue of fact about whether including third party payments and the mortgage broker fee in the principal amount of a loan violates the CLA. And, while a loan origination fee charged by a licensee must be excluded from the principal amount of a loan under RCW 31.04.105(2), the evidence does not establish that LBMC violated this statute by including its loan origination fees in the principal amount of the loans. The trial court did not err in granting summary judgment on this basis.

CPA Violations

The borrowers' argument that LBMC violated the CPA by "equating the principal amount with the principal balance" recasts their argument about simple interest and the principal amount. As explained, the borrowers have not established that LBMC

[16] He also took out a second loan of $30,450 to make up the balance of the price.

improperly included origination fees in the principal amount of the loan or calculated interest in violation of the CLA.[17]

The borrowers also claim LBMC violated the CPA by misrepresenting the nature of the closing costs through listing the mortgage broker's fee as a "loan origination fee" on line 801 of the HUD Statements. The problem with this argument is there is no evidence that the HUD instructions for filling out the HUD Statements are available to borrowers or caused the borrowers to misunderstand the closing costs. The instructions provide guidance to the escrow agent or the closing agent who fills out the forms. In addition, the HUD Statements were not misleading and explicitly state that the loan origination fee is paid directly to the brokers, not LBMC.

The borrowers also argue LBMC violated the CPA by deceptively charging duplicative underwriting fees. But, the undisputed evidence shows that the mortgage broker and LBMC each separately perform underwriting services for different purposes. In his deposition, Weisbrod explained that mortgage brokers undertake an underwriting analysis to ascertain whether a borrower qualifies for a loan and what type of loan will best meet the borrower's financial circumstances. After a loan application is submitted, LBMC must then perform its own underwriting analysis to determine whether a borrower is able to pay the loan. The borrowers argue that Weisbrod's testimony merely shows that underwriting by mortgage brokers is "hypothetical" and unconnected to the particular loan. But, the unrefuted testimony establishes that the mortgage broker's

[17] It appears the breach of contract claim also relies on the premise that LBMC failed to compute interest in accordance with the "simple interest" method and improperly included amounts in the principal amount of the loan. Because we conclude summary judgment was properly granted on this claim, we also conclude the trial court properly dismissed the breach of contract claim.

initial analysis is necessary in order to prepare a loan submission and is part of the process of preparing, processing, and evaluating a loan.[18] Weisbrod's testimony also establishes why the lender must separately undertake an underwriting analysis.

We conclude the trial court did not err in granting summary judgment with regard to the borrowers' CPA claims.

MBPA Claim

Lastly, the borrowers claim LBMC assisted the mortgage brokers in violating the MBPA. The borrowers allege the brokers failed to enter into written agreements with them as required by RCW 19.146.041 and were therefore not authorized to receive fees. Because this claim was not alleged in the complaint or otherwise raised below,

[18] The borrowers also claim that when LBMC is reimbursed for payments made to third parties for services, i.e. charges for tax registration and flood determination, it should list the entities who perform the services and provide proof that it actually paid those charges. The borrowers cite no authority imposing these requirements. See RAP 10.3; Cowiche Canyon v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (this court need not consider issues not supported by sufficient argument or authority).

we need not consider it. RAP 2.5(a).[19] But, even assuming the brokers violated the MBPA, the borrowers provide no legal basis for imposing liability on LBMC. Unlike the CLA, the MBPA does not contain an "aiding and abetting" liability provision. See RCW 31.04.175(1) (violation to aid or abet a violation of the CLA). And, licensed lenders under the CLA are explicitly exempt from all provisions of the MBPA. RCW 19.146.020(1)(a).

CONCLUSION

We affirm the trial court's order granting summary judgment in favor of LBMC and dismissing the borrowers' lawsuit. We note that the borrowers' reply brief was filed in this court under seal. The reply brief shall be unsealed unless the parties note a hearing before the commissioner within ten (10) days of the filing of this opinion to establish compliance with General Rule 15.

WE CONCUR:

Schindler, ACJ

Cox, J.

Columcan, J.

[19] The borrowers made a different argument below. They argued that the brokers failed to timely disclose their separate underwriting fee in the good faith estimate, and LBMC permitted that conduct.